

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1845 of 2004

in

SPECIAL CIVIL APPLICATION No 6423 of 2002

with

Civil Application No. 7909 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA
and
HON'BLE MR.JUSTICE D.H.WAGHELA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

SOMABHAI DEVABHAI CHAUHAN

Versus

DIVISIONAL CONTROLLER S.T. CORPORATION

Appearance:

1. LETTERS PATENT APPEAL No. 1845 of 2004
MR SONEGARA FOR MR GK RATHOD for Appellant
MR JAYESH BAROT FOR MR HS MUNSHAW for Respondent No. 1
-

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

and

HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 11/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE A.M.KAPADIA)

1. Admit. Mr. Jayesh Barot, learned advocate appearing for Mr. HS Munshaw, learned advocate of respondent, waives service of notice of admission on behalf of the respondent- S.T. Corporation.

2. Since the question involved in this appeal is in a narrow compass in relation to modification of the order of backwages made by the learned Single Judge, with the consent of the learned advocates appearing for the parties, the appeal is taken up for final hearing today and is decided by this judgment.

3. Instant appeal which is filed under Clause 15 of the Letters Patent is directed against judgment and order dated 15.7.2002 rendered by learned Single Judge in Special Civil Application No. 6423 of 2002 by which, while allowing the petition partly, award dated 29.10.2001 rendered in Reference (LCN) No.75 of 1999 by the learned Presiding Officer, Labour Court, Navsari, to reinstate the appellant with full backwages and with continuity of service has been modified and thereby backwages has been reduced to the extent of 40% for intervening period till reinstatement and rest of the award has been confirmed.

4. At the relevant time, the appellant was serving as a driver. He was subjected to departmental proceedings on the charge that he was driving the vehicle in a drunken condition. The department, after holding departmental inquiry, dismissed him from service and the appellate authority confirmed the said order. Thereupon the appellant raised industrial dispute which was numbered as Reference (LCN) No.75 of 1999 in Labour Court, Navsari. The learned Presiding Officer, Labour Court, Navsari, by judgment dated 29.10.2001 allowed the said reference of the appellant and passed order to resinate him with full backwages and continuity of service. The said order was subject matter of challenge before the learned Single Judge in a writ petition filed by the respondent being Special Civil Application No.6423 of 2002. The learned Single Judge, after hearing the learned advocates appearing for the parties, confirmed the award for reinstatement. However, with regard to

grant of backwages, reduced the same to the extent of 40% instead of full backwages, which has given rise to the present appeal at the instance of the appellant - workman.

5. We have heard Mr. Sonegara, learned advocate appearing for Mr. GK Rathod for the appellant and Mr. Jayesh Barot, learned advocate appearing for Mr. HS Munshaw, for the Respondent. We have also perused the averments made in the appeal as well as the documents forming part of the petition including the award which was impugned before the learned Single Judge.

6. On the facts and in the circumstances emerging from the record of the case, we are of the considered opinion that there was no earthly reason for the learned Single Judge, merely on surmises and assumptions, to reduce backwages to the extent of 40% as against the full backwages awarded by the Labour Court. It is required to be noted that the appellant workman was removed from service with effect from 17.12.1997. A departmental inquiry was held against him and he was found guilty. The said order was confirmed by the departmental appellate authority. On reference being made to the Labour Court, the Labour Court has passed order for reinstatement of the appellant with full backwages and with continuity of service by award dated 29.10.2001 which came to be published on 5.1.2002. In fact, there is no evidence to the effect that the workman has worked during the intervening period or even after passing and publishing the award granting him reinstatement. Therefore, according to us, the respondent ought to have implemented the award within one month from the date of publication of the award.

7. In this appeal, challenge made by the appellant is qua the order passed by the learned Single Judge reducing the backwages for the intervening period to the extent of 40%. The learned Single Judge ought not to have disturbed the award or at least the part of the award allowing granting full wages from the date of publication of the award till reinstatement even if some concession was expressed on behalf of the workman in respect of the backwages. In aforesaid view of the matter, the award is required to be modified to the extent of granting of 40% backwages for intervening period whereas full backwages from the date of publication of the award till reinstatement of the appellant. The award deserves to be modified accordingly.

8. Since no other point is raised in this appeal, we have not considered any other point.

9. For the foregoing reasons, the appeal succeeds in part and accordingly it is partly allowed. It is held that the appellant is entitled 40% backwages for the intervening period whereas full backwages for the period commencing from one month after the publication of the award on 5.1.2002 till reinstatement. Rest of the judgment of the learned Single Judge does not call for any interference. No order as to costs.

10. As the appeal is allowed, the Civil Application which is filed claiming interim relief now does not assume any survival value and hence it is disposed of with order as to costs.

Direct service is permitted.

(A.M. Kapadia, J.)

(D.H. Waghela, J.)

(karan)